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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

10 RANDALL L. SPITZMESSER,  
11 Plaintiff,  
12 v.  
13 TATE SNYDER KIMSEY  
14 ARCHITECTS, LTD,  
15 Defendant.

Case No. 2:10-CV-01700-KJD-LRL

## ORDER

Presently before the Court is Plaintiff's Objection (#55) to the Magistrate Judge's Order (#48) quashing *subpoena duces tecum* served on the Bank of Las Vegas. Defendant/Counterclaimant Tate Snyder Kimsey Architects, LTD. ("TSK") filed a response (#59) to Plaintiff's objections.

Plaintiff is required to demonstrate that the magistrate judge's ruling is clearly erroneous or contrary to law. The Court finds that the magistrate's Order (#48) is neither clearly erroneous nor contrary to law under Federal Rule of Civil Procedure 72(a). See 28 U.S.C. § 636(b)(1)(A). This Court does not have a definite and firm conviction that a mistake has been made. See Weeks v. Samsung Heavy Indus. Co. Ltd., 126 F.3d 926, 943 (7th Cir. 1997). Among other arguments, Plaintiff asserts that the Nevada Supreme Court held, in Clark v. Lubritz, 944 P.2d 861 (1997), that small closely held corporations are more akin to partnerships and will be treated as such when it

1 comes to fiduciary duties. However, the reasoning in Clark v. Lubritz was based on the prior verbal  
2 agreement of the parties to treat the business like a partnership despite the later incorporation of the  
3 business. Id. at 864-65. It does not create an independent common law duty for majority  
4 shareholders to make all financial records available to shareholders, particularly those who are no  
5 longer employed by and are in competition with the corporation. Thus, the magistrate judge  
6 correctly quashed the *subpoena duces tecum*.

7 Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's Objection (#55) is **DENIED**;

8 **IT IS FURTHER ORDERED** that the Magistrate Judge's Order (#48) is **AFFIRMED**.

9 DATED this 9<sup>th</sup> day of December 2011.

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Kent J. Dawson  
United States District Judge